



FILE: B-180157

DATE: April 30, 1974

MATTER OF: R. & O Industries, Inc.

DIGEST: 1 Samples of knives and spoons submitted with bid on solicitation for carbon steel flatware were properly rejected for poor workmanship because knives contained grind marks and edge of spoon was rough, and solicitation permitted rejection of bids accompanied by samples which did not conform to listed characteristics, including workmanship.

2 The Comptroller General is aware of no basis for objecting to General Services Procurement Regulation 5A-2.408-71(b), which precludes General Services Administration from informing bidder, prior to award, of defects found in bid samples submitted.

Invitation for bids No. FPNGA-HH-55115-A-8-17-73 was issued by the General Services Administration for quantities of carbon steel flatware on a requirements basis. The solicitation required submission of bid samples with the bid and provided that the samples would be evaluated to determine compliance with the subjective characteristic of workmanship for all items and for objective characteristics for certain of the items. R & O Industries, Inc. (R&O), submitted the low bid on several items, but its bid was rejected because the samples submitted by R&O for each item were found to be of poor workmanship. R&O then protested against the rejection of its bid samples and also against the GSA policy of not informing bidders, prior to award of a contract, of any defects found in their bid samples.

GSA reports that after application of the 12 percent Buy American differential and the addition of transportation costs, R&O's bid was low on 29 items of knives and spoons. For item 14-25, utility table knife, R&O's bid samples were evaluated as follows:

"Fails Workmanship

Surface adjacent to cutting edge is not smooth and contains grind marks. This ground surface is also wavy and not well

PUBLISHED DECISION
53 Comp. Gen. R/O

rounded. These defects result in the cutting edge being excessively sharp and are defects which may impair serviceability."

R&O's samples for items 26-35 and 37, serrated table knife, also failed workmanship, for the following reasons:

"Surface on blade tip is not smooth and contains grind marks. This ground surface is also wavy and not well rounded. These defects result in the blade tip being excessively sharp. In addition, the serrations are not uniform and distinct. These are defects which may impair serviceability."

R&O's samples for items 61, 62, 66, 67, 68, and 70, tablespoon, were similarly rejected because the "Edge of bowl on one sample is rough and not finished smooth and round * * *."

R&O questions how its bid samples could have been rejected since it claims to have previously furnished items identical to the bid samples which were acceptable to GSA. R&O also claims that it submitted identical samples to an independent testing laboratory, which found them to be acceptable. It further claims that GSA's reasons for rejecting the samples are arbitrary and capricious and reflect "subjective decisions based on comparison of one bidder's samples to another rather than the same preestablished clearly defined criteria."

The fact that R&O has previously furnished acceptable items does not establish the acceptability of the samples submitted in response to this solicitation. B-176262(2), December 4, 1972. Furthermore, we have recognized that it is not unreasonable for different laboratories to arrive at different conclusions with respect to workmanship on different sets of samples when, as here, it is not established that the different sets of samples are identical in all material respects. B-175307, June 14, 1972. Therefore, and in accordance with paragraph 12(b) of the solicitation, which provided for rejection of bids if the bid samples failed to conform with the specified characteristics, GSA could properly determine the acceptability of R&O's bid with respect to the samples by evaluating only the actual samples with the bid. 34 Comp. Gen. 180 (1954); 37 id. 745 (1958); 51 id. 583 (1972).

In challenging this evaluation, R&O questions how a knife can be too sharp and how it can be determined that a spoon is "rough." It also asserts that the alleged defects regarding serrations go to objective specification requirements and not to the subjective characteristics of workmanship. We have previously recognized, in two cases involving R&O, that objective specification requirements and "workmanship" are not mutually exclusive. B-175699, August 9, 1972; B-175555, August 25, 1972. Therefore, it may well be that GSA could consider non-uniform serrations to be an element of workmanship. However, it is not necessary for us to decide either that question or the question of whether R&O's knives were too sharp. Paragraph 3.7 of Federal Specification RR-F-450C, applicable here, states:

"Workmanship. The finished flatwear shall be clean and shall not contain any burrs, rough die, tool, gouge, or grind marks or burn marks. The finished items shall not be fractured, dented, bent, punctured, or malformed."

Since R&O's samples for both the utility and serrated knives were found to contain grind marks, they were properly rejected for poor workmanship. With respect to the spoon, Table XII of the specification lists "Edges of bowl and handle not rounded or smooth" as a major defect. Obviously, a determination of whether the edge of a spoon is rough or smooth necessarily involves some subjective evaluation, which may involve a comparison with other suppliers' spoons. Although R&O asserts that the tests it ran on its spoons caused no irritation to the skin or tongue of those who conducted the tests, we have no basis for concluding that GSA's subjective evaluation of the spoon samples submitted to it was an abuse of discretion or otherwise improper. Accordingly, the record in this case does not support R&O's allegations that GSA acted arbitrarily and capriciously in rejecting its bid samples.

Section 5A-2.408-71(b) of the General Services Procurement Regulations provides that "Prior to award, no such information regarding inspection or test data shall be disclosed to any bidder or individual except Government officials or employees required to have access to such information in connection with bid evaluation and determination of award." R&O objects to this provision insofar as it precludes GSA from informing bidders, prior to award, about defects found in their bid samples, because it prevents bidders from rebutting GSA's findings until after a contract is awarded

to a competitor. It appears that R&O's primary concern is that a bidder whose sample is improperly rejected has little likelihood of obtaining meaningful relief after contract award because contracts are infrequently terminated. However, as GSA points out, a contract may be terminated in appropriate circumstances if it is established that a valid bid was arbitrarily or improperly rejected. See, e.g., 52 Comp. Gen. 47 (1972) and id. 215 (1972). Furthermore, as R&O recognizes, GSPR 5A-2.408-71(b) was promulgated pursuant to statutory authority, and we are aware of no basis for objecting to it. See B-175307, supra.

For the foregoing reasons, the protest is denied.


Deputy Comptroller General
of the United States